



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**GERALD C. MAH  
JOHN BEN SHEPHERD  
ATTORNEYS AT LAW**

**Hon. Joe Gordon  
County Attorney  
Gray County  
Pampa, Texas**

**Dear Sir:**

**Opinion No. 0-1808**

**Re: Can a county legally pay its sheriff mileage or other remuneration for the transportation of convicts sentenced in the district court of a county to the penitentiary at Huntsville?**

**Your request for an opinion on the above stated question has been received by this department.**

**Article 6166r of Vernon's Civil Statutes regarding the transportation of prisoners reads as follows:**

**"The manager shall make suitable provision and regulations for the safe and speedy transportation of prisoners from counties where sentenced to the State penitentiary by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise. Said transportation shall be on State account and in no instance shall the prisoners be carried direct from the county jails to the State farm, but shall first be carried to the receiving station as designated by the Prison Board where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at such receiving station, the manager shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and postoffice addresses of his immediate relatives, and such other facts as will tend to show his past habits and character; and the manager shall, by correspond-**

ence, or otherwise verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference."

It is apparent from the above quoted statute that the duty to see that prisoners are transported to the penitentiary rests upon the manager of the Prison System. Under this statute he would have the authority to employ the sheriff of a county in which a person was convicted to transport such person to the penitentiary after his conviction upon such terms and for such compensation as was reasonable, and at the same time agreeable to said manager and to the sheriff so employed. When a sheriff acts under an agreement with the general manager of the Prison System to transport convicts to the penitentiary, then it is up to the Prison System to pay him such compensation as was agreed upon between the parties. However, after a diligent search, we fail to find any authority which would require, or even permit, the county to pay mileage or any other remuneration for the transportation of convicts sentenced in the district court of a county to the penitentiary at Huntsville. The county could certainly not pay the same unless authorized to do so by some statute either expressly or by necessary implication.

In opinion written December 14, 1932 by Honorable Homer C. DeWolfe, Assistant Attorney General, directed to Honorable L. C. Hurt, County Auditor of Bell County, this department held that a county is without authority to pay the sheriff for the expense of transporting a convict to the penitentiary and that the state is also without authority to pay this expense other than is provided in Article 6166r, Vernon's Annotated Civil Statutes. This opinion further holds that the sheriff can be compensated for the transportation of prisoners by the manager of the Prison System only when there is an agreement with the sheriff to transport such prisoners.

In opinion written August 13, 1932 by Honorable Scott Gaines, Assistant Attorney General, addressed to Honorable Leslie Neill, County Attorney, Tyler, Texas, this Department held that a Commissioners' Court is with-

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out authority to allow a sheriff payment from county funds for expenses of the sheriff in transporting prisoners from a county jail to the penitentiary.

In view of the foregoing authorities you are respectfully advised that it is the opinion of this department that a county cannot legally pay its sheriff mileage or any other remuneration for the transportation of convicts from the counties where such convicts are convicted to the penitentiary at Huntsville.

Trusting that the above fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams

Ardell Williams  
Assistant

AW:ob

Approved: Jan. 10, 1940  
/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION  
COMMITTEE  
By EWB  
CHAIRMAN

WJT